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IN THE

Supreme Court of the United States

No. 75. **October Term, 1933.**

GUY T. HELVERING, Commissioner of Internal Revenue,
Petitioner,

v.

JULIA BUTTERWORTH, HENRY W. BUTTERWORTH and GIRARD TRUST COMPANY, Trustees Under the Will of WILLIAM B. BUTTERWORTH, Deceased,
Respondents.

On a Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

BRIEF FOR RESPONDENTS.

CHARLES MYERS,
JOHN HAMPTON BARNES,
Attorneys for Respondents.

1421 Chestnut Street,
Philadelphia, Pa.

International, 236 Chestnut St., Philadelphia

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JULIA BUTTERWORTH, HENRY W. BUTTERWORTH, AND GIRARD TRUST COMPANY, TRUSTEES UNDER THE WILL OF WILLIAM B. BUTTERWORTH, DECEASED,

Respondents.

ON A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

BRIEF FOR THE RESPONDENTS.

OPINIONS BELOW.

The opinion of the Board of Tax Appeals (R. 9-17) is reported in 23 B. T. A. 838. The opinion of the Circuit Court of Appeals (R. 21-26) is reported in 63 F. (2d) 944.

STATEMENT OF THE CASE.

The petitioner's Statement of the Case is correct, except that he does not state that the widow, by writing executed, filed and recorded as required by the Statutes of Pennsylvania, elected to take under the will in lieu of the share allowed her in decedent's estate by the law of Pennsylvania. The applicable statutes of Pennsylvania are set forth in the Appendix, *infra*, p. 13.

THE PERTINENT STATUTORY PROVISIONS.

Income taxes for the years 1924 and 1925 are involved, which are governed by Section 219 of the Revenue Acts of 1924 and 1926 (this Section is identical in both Acts), as follows:

> "Sec. 219(a). The tax imposed by Parts I and II of this title shall apply to the income of estates or of any kind of property held in trust, including——
>
> (2) Income which is to be distributed currently by the fiduciary to the beneficiaries. . . .
>
> (b) . . . the tax shall be computed upon the net income of the estate or trust, and shall be paid by the fiduciary. The net income of the estate or trust shall be computed in the same manner and on the same basis as provided in section 212, except that——
>
> (2) There shall be allowed as an additional deduction in computing the net income of the estate or trust the amount of the income of the estate or trust for its taxable year which is to be distributed currently by the fiduciary to the beneficiaries . . . but the amount so allowed as a deduction shall be included in computing the net income of the beneficiaries whether distributed to them or not."

SUMMARY OF ARGUMENT.

1. The statute expressly allows trustees to deduct income of the trust distributed currently to beneficiaries in computing the net taxable income of the estate or trust. The Board of Tax Appeals found that respondents distributed trust income to the widow during the years in question (R. 9); therefore the statute permits them to deduct such distribution in computing the net taxable income of the estate or trust. The allowance of the deduction is not dependent upon the liability of the widow to pay a tax on the income.

2. The widow is a beneficiary of the trust and her status as such is not changed by the fact that she takes by purchase in the sense of the law of acquisition as distinguished from the law of inheritance, by virtue of her election to take under the will instead of her statutory dower.

3. The question of whether the widow is taxable does not arise in this case, as is pointed out by the Court below (R. 23). The only question before the Court is whether the trustees are entitled to deduct the income distributed to the widow in computing the net taxable income of the estate or trust.

ARGUMENT.

1. The Statute Expressly Allows the Deduction of Trust Income Distributed Currently to Beneficiaries, Regardless of Whether the Beneficiaries Pay Tax Thereon.

The Government concedes in its brief (p. 17) that the income in question is income in the hands of the trustees. The statute expressly allows trustees to deduct income distributed currently to beneficiaries, and the Board found that such income was so distributed to the widow (R. 9). The Government argues, however, that the deduction may be made by the trustees "only on the condition that the liability for the tax is transferred with the payments" (p. 14) or "on condition that the one to whom the income is paid shall be responsible for the tax" (p. 17). The terms of the statute are a complete answer to this argument.

The concluding clause of Section 219 (b) (2) provides, "but the amount so allowed as a deduction shall be included in computing the net income of the beneficiaries, whether distributed to them or not." The obvious answer to the Government's contention is that the grammatical arrangement of the paragraph in question precludes the Government's construction. The paragraph opens with a declaration that currently distributed income of the estate or trust shall be allowed as a deduction. The concluding clause on which the Government relies does not imply that if the income distributed to the beneficiaries is not included in computing the beneficiaries' net income, it shall not be allowed as a deduction. On the contrary the concluding clause provides "but the amount so allowed as a deduction

shall be included in computing the net income of the beneficiaries." This can only mean that the deducted income be included in computing the net income of the beneficiaries, and it is apparent that the concluding clause was inserted in order to make sure that the beneficiaries who receive currently distributed income from a fiduciary would return it for tax, if taxable. The concluding clause was directed at the beneficiaries and not at the estates. It was not intended to qualify the earlier clause and to place any limitations on the deduction allowed by the earlier clause, so far as the estates and trusts are concerned. If the concluding clause had read—"provided the amount so allowed as a deduction is included in computing the net income of the beneficiaries," there might be some ground for the Government's contention, but it is impossible to construe the clause as though it reads that way. "In Statutes levying taxes the literal meaning of the words employed is most important, for such Statutes are not to be extended by implication beyond the clear import of the language used"—*United States v. Merriam*, 263 U. S. 179, 187.

Another reason why the Government's contention is unsound is because of the use in this clause of the imperative words "shall be included in computing the net income of the beneficiaries." The fiduciaries under the law have nothing to do with the payment of tax by beneficiaries or computation of their net incomes. The only duty of the fiduciaries is to make a return and pay the tax due, whatever it may be, on the trust estates' income. The computation of the beneficiaries' incomes and payment of tax thereon is a responsibility of the beneficiaries, and not of the fiduciaries. Consequently, a direction as to what shall be included in computing the net income of the bene-

ficiaries (for taxable purposes when and if any tax is payable on such income) such as the clause now being discussed, must be directed at the parties on whom the duty of computing such net income rests, namely, the beneficiaries. It is repeated that this clause cannot refer to the fiduciaries because they have nothing to do with the computation of the net income of the beneficiaries.

The court below correctly analyzes the provision of the statute now under discussion, as follows (R. 25):

> "It (the statute) said the fiduciary may deduct; not that he may deduct if or provided the income so deducted is taxable to the recipient. It distinctly did not say that he may not deduct if the income is not taxable to the recipient. In other words, the right of deduction which the Congress gave a trustee was not conditioned upon the taxability of the beneficiaries. The grant, by its terms, was absolute. Or, we may assume for purposes of discussion, and with entire respect, that the Congress did not know the law of the three cited cases until the Circuit Court of Appeals declared it. In that event the Congress made no provision for such a situation. It follows that in either case, knowing the law or not knowing the law, the Congress declared the way in which income from a trust estate should be computed and gave, without excepting the situation in this case and without any like limitation, a right to a fiduciary to deduct distributed income from gross income in making income-tax returns, and provided, accordingly, who should pay the tax. As that right was conferred upon a trustee by words of the statute which, standing apart from the three cited decisions, are so plain as not to admit of construction, we hesitate to withdraw the right by giving the words of the Congress a meaning different from what its words import merely because the Government will, unless this is done, lose revenue from a source of which it has not availed itself."

The Government also argues (p. 12) that the purpose of Congress was to tax all trust income. Even conceding this to be so, it does not follow that the respondent trustees should be denied the deduction expressly allowed because the recipient of that income does not pay a tax thereon. The respondents are not claiming an exemption, as contended by the Government at page 13 of its brief, but the right to a deduction. The statute provides that trusts shall be taxable on their income, and defines how that income shall be computed, specifying certain deductions. These deductions are not exceptions or provisos; they have appeared in all of the Income Tax laws. There have been many decisions on the question of whether or not deductions may be allowed as falling within the particular statute involved, and it has never been suggested that there is a presumption against the taxpayer in such cases. See *United States v. Woodward*, 256 U. S. 632; *Duffy v. Central R. R.*, 268 U. S. 55. Respondents are not claiming an exemption; they are claiming a deduction in computing their net income subject to tax and "the solution of the question turns entirely upon the statutory provisions"—*United States v. Woodward*, supra, at page 634. Thus in *Lynch v. Alworth-Stephens Co.*, 267 U. S. 364, a case where the question was whether a lessee of a mine could deduct depletion in computing its net income, this Court allowed the deduction, quoting with approval the following language of the Circuit of Appeals, page 370:

> "The plain, obvious and rational meaning of a statute is always to be preferred to any curious, narrow, hidden sense that nothing but the exigency of a hard case and the ingenuity and study of an acute and powerful intellect would discover."

It is, of course, true that the burden is on the taxpayer who claims that the deduction was illegally disallowed—*Reinecke v. Spalding*, 280 U. S. 227—but that does not mean that the statutory provision allowing the deduction is to be construed strictly against the taxpayer.

In the case of *Smietanka v. First Trust & Savings Bank*, 257 U. S. 602, this Court held that the Income Tax Act of 1913 made no provision for taxing income held and accumulated by a trustee for unborn and unascertained beneficiaries. The Government in that case evidently made the same argument that is made in the instant case: that Congress intended to tax all income. This Court, however, said (p. 605):

> "It may be that Congress had a general intention to tax all incomes whether for the benefit of persons living or unborn, but a general intention of this kind must be carried into language which can be reasonably construed to effect it. Otherwise the intention can not be enforced by the courts. The provisions of such acts are not to be extended by implication."

In the case last cited this Court commented (p. 606) on the fact that the Treasury Department did not attempt, for two years, to collect tax on income of the character involved in that case. The same comment may be made in the case at bar. The deductions claimed by respondents were allowed without question for several years, until after the decisions of the Circuit Courts of Appeals that the widow was not liable to tax. Thereafter the Commissioner changed the practice by IT 2480 and IT 2506, both published in 1929, as is pointed out by the Court below (R. 22), and on page 10 of the Government's brief.

For the foregoing reasons we submit that under the terms of the Statute the respondent trustees may deduct the income of the trust distributed to the widow in computing the net taxable income, regardless of the liability of the widow.

2. The Widow Is a Beneficiary Within the Meaning of the Statute.

The Government argues (p. 14) that the Court below construed "beneficiary" too broadly, and that Congress intended the word "to include only those who not only receive distributions of trust property, but who receive the distributions as income, taxable as such." There is nothing in the Statute to suggest that the word is used in this restricted sense. This Court recently had occasion to consider the same term as used in Sec. 219 (g) of the Revenue Act of 1924, in the case of *Reinecke v. Smith*, 289 U. S. 172, and Mr. Justice Roberts there said (p. 174):

> "A trustee is not subsumed under the designation 'beneficiary.' Both words have a common and accepted meaning—the former signifies the person who holds title to the res and administers it for the benefit of others; the latter the cestui que trust who enjoys the advantages of such administration."

This is in accordance with the Treasury Department's definition of the term "beneficiary" as used in Sec. 219, subdivisions (g) and (h) of the Acts involved, as quoted by the Court below in its opinion (R. 26).

In *Emma Louise Smith v. Commissioner of Internal Revenue*, 59 F. (2d) 56, the Circuit Court of Appeals for the First Circuit reversed the Board of Tax Appeals, the Board having adopted a narrow and restricted construc-

tion of the word "beneficiary" as used in Section 219 (g) of the Revenue Acts of 1924 and 1926. The Circuit Court of Appeals said, page 58:

> "The Board also took the view that the word 'beneficiary' in Section 219 (g) has reference 'to a present beneficiary of a trust, not to one who has only a remote possibility of becoming a beneficiary in the future,' and because the likelihood of Emelius W. Smith, the husband, ever taking a vested interest under the trust was remote, he was not a beneficiary. . . .
>
> It would seem that Congress did not intend, by the use of the term 'beneficiary' in Section 219 (g) only a beneficiary having a present vested interest, but intended to include within that term a beneficiary or beneficiaries having contingent interests as well as those having present or vested ones.
>
> Undoubtedly Congress could have drawn a line between beneficiaries holding vested and contingent interests, or between those having contingent interests based on their respective degrees of remoteness, but it has done neither of these things. It is, therefore, far more reasonable to conclude that by the word 'beneficiary' Congress intended to include persons or classes of persons designated, in the particular trust under consideration, entitled to take present or contingent interests thereunder."

The Government also argues, at page 15, that "the widow is not a 'beneficiary' of the trust if the payments to her must be regarded as returns of capital; she is a 'purchaser,' receiving what she has purchased in installments."

The argument is unsound because the payments to her cannot be regarded as returns of capital. She elected to take income and what is paid to her is income. The trustees cannot pay her anything else. They must pay her

income. The Will prevents them from paying her any part of the capital. If the trust produces no income the widow gets nothing. She cannot have any part of the capital because she elected to take income. See opinion below (R. 24). To imply that capital is "returned" to her is likewise fallacious, not only for the reasons above, but because she has never had any capital to be returned.

To say that "she is a 'purchaser' receiving what she has purchased in installments" is equally unsound. She has made no purchase in a contractual sense. She made an election and is only a purchaser as distinguished from one who takes by descent. Even if she be regarded as a "purchaser" by contract, she did not agree to take anything in installments. She elected to take the income, which is paid to her as received, and not in "installments."

The presumption is that the term "beneficiary" is used in the same sense throughout the Statute. *Pampanga Mills v. Trinidad,* 279 U. S. 211, 218; *Atlantic Cleaners & Dyers v. United States,* 286 U. S. 427, 433. To say that the term "beneficiary" does not include the widow in the instant case is to run counter to the rule of construction that "the legislature must be presumed to use words in their known and ordinary signification," *Old Colony R. Co. v. Commissioner,* 284 U. S. 552, 560, and that "the popular or received import of words furnishes the general rule for the interpretation of public laws," *Woolford Realty Co. v. Rose,* 286 U. S. 319, 327.

In *United States v. Bolster,* 26 F. (2d) 760, a widow who elected to take under the Will of her husband, was described as a beneficiary.

In *Gruver v. Wood,* 174 Mass. 540, the testator gave his widow a bequest in lieu of dower and the residue to the

"several beneficiaries under the will." The court affirmed a ruling by Chief Justice Holmes, saying (p. 541):

> "The only question is whether the widow is a 'beneficiary under this will,' within the meaning of the residuary clause. We think she is. It is true the legacy to her in the second item is given apparently in pursuance of the antenuptial contract, and in lieu of dower and of any other right she, as widow, might have in the personal estate of the testator, and that therefore, in case of a deficiency of assets, she would not be regarded as a 'mere' or 'pure beneficiary,' but would be entitled to a preference. Pollard v. Pollard, 1 Allen 490; Towle v. Swasey, 106 Mass. 100. Yet she receives something under the will, and in the natural and ordinary sense is a beneficiary, and we think the term was used by the testator in this sense."

We submit, therefore, that the term "beneficiary" as used in the Act of Congress includes a widow who receives income in lieu of dower.

3. The Question of the Liability of the Widow Does Not Arise.

As to the discussion in the brief of the Government, pages 18-25, in respect of the liability of the widow for income tax, the Court below having held that that question was not before it (R. 23), and the widow not being a party to the record, no further argument is presented by respondents on that question.

CONCLUSION.

The judgment of the Circuit Court of Appeals is correct and should be affirmed.

Respectfully submitted,

CHARLES MYERS,
JOHN HAMPTON BARNES,
Attorneys for Respondents.

APPENDIX.

Penna. Act of June 7, 1917, P. L. 403:

> Section 23. (a) When any person shall die testate, leaving a surviving spouse who shall elect to take against the will, such surviving spouse shall be entitled to such interests in the real and personal estate of the deceased spouse as he or she would have been entitled to had the testator died intestate. . . .
>
> (b) A surviving spouse electing to take under or against the will of the decedent, shall, in all cases, manifest the election by a writing signed by him or her, duly acknowledged before an officer authorized by law to take the acknowledgment of deeds, and delivered to the executor or administrator of the estate of such decedent within two years after the issuance of letters testamentary or of administration. Neglect or refusal or failure to deliver such writing within said period shall be deemed an election to take under the will.

Penna. Act of June 17, 1917, P. L. 429:

> Section 3. The shares of the estate directed by this act to be allotted to the widow shall be in lieu and full satisfaction of her dower at common law, so far as relates to land of which the husband died seised; and her share in lands aliened by the husband in his lifetime, without her joining in the conveyance, shall be the same as her share in lands of which the husband died seised. . . .

See Purdon's Penna. Statutes Ann. Title 20, Sections 31, 261, 262.